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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,891	08/28/2006	Martin Vorbach	2885/96	3388
26646 7590 02/22/2010 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
VICARY, KEITH E				
ART UNIT		PAPER NUMBER		
2183				
MAIL DATE		DELIVERY MODE		
02/22/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/551,891

Applicant(s)

VORBACH, MARTIN

Examiner

KEITH VICARY

Art Unit

2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 February 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 5-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/Eddie P Chan/
Supervisory Patent Examiner, Art Unit 2183

Continuation of 13. Other: Examiner begins by noting that the amendment is not being entered at least due to the amendment to claim 8. Specifically, it is recited that "responsive to an interrupt, suppressing an increase by the configuration of the maximum allowed runtime to respond to the interrupt by expiry of the maximum allowed runtime." However, the original disclosure does not appear to disclose the concept of responding to the interrupt by expiry of the maximum allowed runtime. Instead, the original disclosure appears to convey that response to the interrupt would only occur after the expiry of the non-increased maximum allowed runtime. In an event that the original disclosure does claim the aforementioned concept, examiner notes that the limitation would consequently require further search and consideration.

In addition, claim 5 recites the partially amended limitation "suppression by at least one of a task-switch and a thread switch". This limitation is more specific in scope than the limitations which were previously present, especially in view of the fact that applicants arguments regarding this limitation (bottom of page 7) would not directly map to the aforementioned previously presented limitations (i.e. "the increased maximum allowed runtime expiring if the first configuration, in a non-error operation and for at least one of a task switch and a thread switch, does not further increase the maximum allowed runtime..."). Therefore, the change in scope is not merely a trivial byproduct of making the claim definite, and would require further consideration.

In addition, claim 10 recites the newly-added limitation "scheduled" which changes the scope of the "task switch" limitation, and would require further consideration.

In addition, claim 10 recites the newly-added limitation "responsive to the occurrence of the interrupt" which narrows the scope of the relationship between an interrupt occurring and the maximum allowed runtime not increasing, especially in view of the fact that applicant argues in the middle of page 7 of a difference between an interrupt causing a thread to not perform useful processing and an interrupt merely coinciding with a thread that is not performing useful processing. Therefore, the change in scope is not merely a trivial byproduct of making the claim definite, and would require further consideration.

Examiner notes for the purpose of future prosecution that the amendment would otherwise overcome the previous pending claim objections and previous pending 112 rejections.

Applicant first argues on page 7 that col. 22, lines 4-6 of Borkenhagen merely indicates that the inability by an active thread to perform useful processing coincides with an inactive thread waiting to service an interrupt, and does not state that the interrupt causes the ability by the active thread to perform the useful processing.

However, this interpretation is not logical in the context of the invention. If the interrupt did not cause the active thread to no longer be considered to be performing useful processing of instructions, then the interrupt would remain unhandled until another event resulted which caused the active thread to no longer be considered to be performing useful processing of instructions. However, Borkenhagen aims to service an external interrupt within a limited period of time (col. 14, lines 44-47 as also cited by applicant). Therefore, it is clear that there is a causal relationship between an interrupt occurring and performing "useful processing".

Nevertheless, the above argument and response to argument may be rendered moot in view of other citations in Borkenhagen. For example, see col. 19, lines 49-51 and 56-57, and col. 20, lines 22-30, which discloses of changing thread priority upon occurrence of an interrupt, which causes thread switching.

Applicant on the bottom of page 7 argues the limitation that a further increase of the maximum allowed runtime is suppressed by a task or thread switch. While this limitation, as discussed above, would require further consideration, examiner's initial impressions in view of the arguments are as follows. Applicant argues that the thread switch does not suppress the active thread from performing useful processing. Examiner first notes that while at the time of the task switch there may be no useful processing to be accomplished, future useful processing may still be suppressed from being immediately processed (e.g. when data returns from a cache miss, but there is no sufficient trigger to switch threads back to that inactive thread; if the task switch never occurred, the thread would be able to process the returned data right away). Moreover, Borkenhagen discloses in various places that task switches can occur even as useful processing is occurring, such that it would be immediately suppressed (e.g. the thread priorities of col. 17, lines 50-57).

KV